

VZCZCXRO3222

RR RUEHBZ RUEHDU RUEHJO RUEHMR RUEHRN

DE RUEHDR #0206 0890249

ZNR UUUUU ZZH

R 300249Z MAR 09

FM AMEMBASSY DAR ES SALAAM

TO RUEHC/SECSTATE WASHDC 8374

INFO RUCPDOC/DEPT OF COMMERCE WASHDC

RUEATRS/DEPT OF TREASURY WASHINGTON DC

RUEHLMC/MCC WASHINGTON DC

RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE

RUEHNR/AMEMBASSY NAIROBI 1213

RUEHKM/AMEMBASSY KAMPALA 3371

RUEHLGB/AMEMBASSY KIGALI 1298

RUEHJB/AMEMBASSY BUJUMBURA 2849

UNCLAS DAR ES SALAAM 000206

SIPDIS

SENSITIVE

AF/E FOR JLIDDLE, AF/EPS FOR ABREITER, INR/RAA FOR FEHRENREICH

PASS USTR FOR PATRICK COLEMAN, WILLIAM JACKSON

COMMERCE FOR BECKY ERKUL

TREASURY FOR REBECCA KLEIN

NAIROBI PASS FCS

E.O. 12958: N/A

TAGS: [PGOV](#) [ECON](#) [EINV](#) [ETRD](#) [TZ](#)

SUBJECT: APR ENERGY: CONFLICTING MESSAGES FROM TANZANIAN GOVERNMENT

REF A: Dar es Salaam 120 and prior

¶1. (SBU) Summary. Department of Commerce DAS Holly Vineyard discussed the ongoing tax issue concerning Florida-based APR Energy, LLC, (ref a) with several GOT officials during her March 16-19 visit to Dar es Salaam. While the Ministry of Energy and Minerals supported APR's position on the intent of the contract that lies at the center of the dispute, Ministry of Finance (MOF) and Tanzania Revenue Authority (TRA) insist that APR must appeal the claimed tax through the formal Tanzanian channels. APR representative Jake Kennedy said the company remained open to a settlement, but only if the GOT authorizes export of the company's equipment. End Summary.

¶2. (SBU) Acting Commissioner for Energy Prosper Victus told Vineyard that the spirit of the 2006 contract was for Tanesco, Tanzania's energy parastatal, to assume responsibility for the taxes that currently are in dispute. He said the case was "unfortunate," and that the contract had been executed with too much haste. Victus said he had discussed the case with MOF and expressed confidence that the dispute would be resolved, perhaps by MOF arranging for a tax exemption. Victus suggested we advise other companies bidding on Tanesco projects to be sure all loopholes are well covered, but added that we should consider the APR dispute an isolated case.

¶3. (SBU) TRA Commissioner for Tax Investigation Lusekelo Mwaseba reiterated TRA's position, that APR - not Tanesco - is the relevant taxpayer and accordingly must either pay the claimed tax or use the proper channels for appeal. Mwaseba referred to the Attorney General's ruling that the 2006 contract did not exempt APR from paying corporate tax, and repeated TRA's insistence that APR pay the "agreed" withholding taxes on its employees. Mwaseba added that at the February meeting between GOT and APR's local attorney and accountant, APR had been given the opportunity to file an objection to the claimed tax. He said TRA had not received an objection. Mwaseba said pointedly that TRA had exercised great restraint by not auctioning the seized plant. DAS Vineyard expressed appreciation that the plant had not been auctioned, noting that such an act would be seen as expropriatory.

¶4. (SBU) MOF PS Ramadhani Khijjah covered much of the same ground as TRA. He stressed that MOF, while setting policy, does not have a formal role in tax disputes, which should be handled through the Tax Appeals Board and Tax Appeals Tribunal. Khijjah suggested APR exhaust all local avenues for appeal before considering international arbitration. Khijjah said APR and TRA should agree on the exact amount of tax in dispute, then report back to the interagency group chaired by the Ministry of Energy and Minerals.

Khijjah suggested we advise other U.S. companies interested in doing business with the GOT or parastatals like Tanesco that they should be sure to know local laws well.

¶ 15. (SBU) DAS Vineyard also raised the APR dispute in her meetings with the Ministry of Industry, Trade and Marketing and the Tanzania Investment Center. Officials from both organizations expressed concern and offered to contact MOF.

¶ 16. (SBU) APR Project Coordinator Jake Kennedy told Vineyard that APR's accountant was in the process of completing an audit to determine the total tax in dispute (though he complained that APR was in effect paying for work TRA should already have done). Once that information was presented to the GOT, he hoped there might be an avenue for resolution, especially if the figure turned out to be much smaller than the approximately USD 10 million claimed by TRA. Kennedy emphasized that APR would be willing to make a deposit in an escrow account or some other mechanism to launch a formal appeal, but only if the GOT would expressly permit export of APR's seized plant. Otherwise, APR would take all available legal action. Kennedy said he hoped to avoid that step, not least because of its impact on future APR business in East Africa.

¶ 17. (U) DAS Vineyard has cleared this cable.

ANDRE